

**Testimony of
David Littell
Acting Commissioner, Department of Environmental Protection
Before the
Joint Standing Legislative Committee on Natural Resources
on the
Appointment of David Littell of Portland
as
Commissioner of Environmental Protection**

January 17, 2006

Good afternoon Senator Cowger, Representative Koffman and distinguished members of the Natural Resources Committee. I am David Littell, Acting Commissioner of the Department of Environmental Protection (DEP). With me today are my wife Penny, the Planning and Code Enforcement attorney for the City of Portland and my daughters Brickley, a kindergarten student at Longfellow Elementary School, and Georgia, age two, who attends the Portland YMCA's daycare.

It has been an honor to serve both as the Deputy Commissioner of the Maine Department of Environmental Protection for the last two years, and most recently as its Acting Commissioner, working with this Committee in passing many milestone laws. These laws have allowed for protection our environment -- in an era of fiscal limitations -- not by expanding the Department but by doing our jobs better, smarter and with the benefit of over 30 years of environmental protection under our belts.

I want to note that it has been a pleasure to work with the DEP's many staff. Their ability, knowledge and dedication to protecting Maine's environment impress me every day and we need to ensure that the citizens of Maine know what a wonderful asset they have in the very capable staff at the DEP.

Public Nature of the DEP's Work

With reference to recent negative publicity, I have stated and repeatedly restate that my first priority is to restore the credibility of the DEP with the public — to assure all that we will appropriately undertake the important mission entrusted to the Department by Maine's citizens. The public needs to know that the DEP is doing its job, doing it well and properly. We need to move forward.

You understand that I and all DEP staff need to be able to sit down with any number of parties to conduct reasonable discussions to do our jobs. That said, I also assure you that these discussions are undertaken as public officials and no secrets or confidences will inappropriately be maintained.

Long before the controversy with the Androscoggin permits erupted this last year, I told a number of people that if they want to meet with me, I will do so with the understanding that anything we discuss will be potentially and likely shared with others – including those on the other side of the issue. There are only a few, very narrow classes of confidential business information that are appropriately not disclosed under state law; other than that, everything I do is and should be open to public scrutiny. As public officials, it is important that all members of the Department do the public's business and share information regarding how we do that business when asked.

Environmental Protection and Economic Development

While protecting our environment and Mainers' public health is the DEP's core mission, it's important to consider the broader context in which we operate. There is a fundamental fact that the ability of the Maine economy to perform and grow generates the income which in turn supports the State's revenue. In the long run, the DEP and all state agencies cannot do their job if Mainers cannot do theirs.

Without a strong economy, I would submit that an environmental ethic and strong environmental laws are not sustainable. Likewise, I would submit that without strong environmental protection, good and sensible economic development will not occur. It is quite clear to me that a strong economy and strong environmental protection go hand-in-hand.

Due in large part to Maine's tremendous natural environment, we are experiencing a significant influx of people looking to live here -- retirees and people simply looking to escape urban areas choked by pollution, traffic and the lack of any real environment. The building sector of our economy is particularly strong, but there is a downside: increased sprawl, destruction of wildlife habitat and development pressure particularly on marine and inland water bodies.

Thus, as per capita income, exports and the number of Mainers working all increase, it's the DEP's job to ensure the environment flourishes as well. While Maine's economy has grown, the DEP and this Committee have strengthened our programs that keep Maine's air, water and land clean, enhancing our environmental protections.

During this era of fiscal limitation, we have managed to maintain core programs and improve environmental and public health protections even while having to eliminate some—fortunately not many—positions at DEP. Significantly, we can be proud of the environmental milestones achieved since 2003.

Here are examples of our program achievements in areas I have personally and directly been involved in overseeing, managing and working with DEP's staff:

DEP Program Milestones (2003-2006)

The highlights of the milestones achieved from 2003 through January 2006 include the following:

? **Clean Air and Clean Cars:** the Clean Car resolution adopting the Zero Emission Program and the Board of Environment Protection's adoption of the vehicle greenhouse gas standards assure that the cleanest burning, lowest emitting vehicles made will be available for sale in Maine.

o The initiative will lower in-state ozone pollution, air toxics and greenhouse gas emissions and thereby contribute to attaining the goals we have set as part of our landmark commitment to address the root causes of climate change. It also provides a major co-benefit in that these cars and trucks emit significantly lower levels of toxic pollutants, which are harmful to everyone's health.

? **Protections for Vernal Pools and Significant Wildlife Habitat:** The DEP and this committee have unanimously supported protections that will safeguard and improve Maine's significant habitat protection (wading bird and shorebird habitat) and vernal pools – habitat crucial for maintenance of healthy ecosystems throughout the state. Rulemaking was completed this fall and the rule will come back before this committee in this session.

? **Landmark Electronics Waste Program:** Maine is one of only three states leading the way on recycling old computer monitors and television sets. Each such unit contains up to eight pounds of lead, mercury, cadmium and other toxic materials. Under Maine's plan, manufacturers must assume the recycling costs, giving them the incentive to design future products using less toxic materials. DEP has completed rulemaking to implement the "shared responsibility" law which will become effective later this week. The program will ensure that the unwanted electronic waste is properly recycled and does not go into our landfills or waste incinerators.

? **Coastal Vessel Discharge Monitoring Program:** As mandated by the Legislature, DEP has now fully implemented cruise-ship permitting and monitoring to protect Maine's harbors and coastal waters. Working with environmental groups, cruise vessel operators, and concerned citizens, DEP crafted a plan that will prevent discharges of sludge and bacteria-laden waste water from large cruise ships visiting Maine. The program acknowledges the advancements in treatment technology and waste handling practices made by the industry, while allowing DEP to more closely monitor the health of our coastal waters. A request to classify Casco Bay as Maine's first federal No Discharge Zone has been submitted to U.S. EPA and is likely to be granted soon.

? **Shellfish harvesting areas reopened.** Through removal of overboard discharges and failing septic systems, once-closed shellfish harvesting areas continue to be restored to productive use. Recent changes in the law have accelerated this initiative, with 60 systems being removed last year that would have remained in place under the old law. In terms of harvesting area, 1020 acres were opened up in 2004 and 844 more acres in 2005.

? **An overhaul of Maine's stormwater control program extends protections throughout the state for the first time.** The new stormwater rules rely on use of the latest "best management practices", as well as improved development design, to prevent stormwater runoff and minimize the need for treatment. These practices and the new technology often entail lower capital and operating costs than those associated with existing requirements, while providing more environmental protection and treatment. These rules better control of Maine's number one surface water pollutant: stormwater.

? **Childhood Lead Poisoning Prevention:** Legislation passed last session explicitly recognizes the need to alert Maine residents and businesses to the risks associated with exposure to lead paint. It establishes a funding mechanism for education and outreach programs to provide knowledge and tools for Maine's citizens and businesses to reduce health threats to children and workers.

? **Mercury Reductions:** We have taken a number of initiatives to reduce future environmental and health risks due to mercury contamination of Maine's air and water. We require dentists to recycle the mercury used in fillings; we no longer permit the sale of certain mercury-containing products; and we have worked to boost efforts to collect and recycle mercury-added thermostats. These efforts keep Maine on the leading edge of reducing our own contributions to a state and global problem. This session we will continue to do so, with a proposal to reduce the emissions limit for mercury from 50 pounds/year to 25 pounds/year and a proposal to ban the use of mercury-containing button cell batteries. We will also work to increase the recycling rate of thermostats in Maine. It is now too low and many of these thermostats are likely being incinerated in our four waste incinerators.

? **Brominated Flame Retardants:** With studies showing a dramatic build up in humans of chemicals contained in certain flame retardants, Maine enacted a law banning sales of products containing two types of these chemicals. That law also states a clear intention that the most common brominated flame retardant ("deca") be banned unless no suitable alternative is found. While flame retardants are generally valued for safety reasons, the uncertainty surrounding the toxicity of these particular chemicals and the concern for human health, notably the potential for developmental disorders, prevails.

? **Governor's Carbon Challenge:** DEP has partnered with more than 50 businesses, non-profits and municipalities (including the Cities of Portland and Hallowell) to join the Governor's "Carbon Challenge". The program invites organizations to voluntarily reduce greenhouse gas emissions in conjunction with Maine's Climate Change Action Plan. With technical assistance available from the Department, the participants have stepped forward to assess and reduce their impacts on the global environment.

? **Pollution control and enforceable plans for water quality improvements:**

Approximately 100 miles of rivers and streams have been brought up to the listed water quality standards by improvements in pollution controls or the development of enforceable plans that require attainment of standards within a specified timeframe. Of these miles, over 50 are now meeting standards due to improvements required by DEP to abate municipal combined sewer overflows.

? **Reduction of School Bus Emissions:** Maine's state-wide school bus retrofit program has funded the purchase of pollution control equipment for more than 300 buses in 26 school districts over the last 18 months. The equipment addresses the potential health risks posed to children, teachers and drivers by reducing particulate matter in bus emissions at least 25%, reducing hydrocarbons by 25-52% and reducing carbon monoxide by 13-40 percent.

? **Lincoln Paper & Tissue:** In addition to the 2004 response action that prevented the abandoned Lincoln mill from turning into a very expensive hazardous waste cleanup site, last spring, DEP issued the air emission license needed to operate Lincoln Paper and Tissue's new paper machine in less than 30 days. The action paved the way for the mill to invest tens of millions of dollars in a new machine that will create 40 new permanent jobs, bringing the number of full-time permanent positions at the Lincoln Mill to 400. It will also create 75-100 construction jobs this year and next.

? **Brewer Redevelopment:** DEP's 2004 response at the former Eastern Fine Paper site in Brewer and 2004-05 remedial investigation and activity have facilitated plans to redevelop the waterfront site in Brewer and opened the door to significant investment by a Minnesota retail developer.

? **Wolman Steel:** The unexpected but extremely serious discovery of additional contamination at the Wolman site in Waterville prompted extensive testing and rapid redesign of the original plan to cleanup the old surplus salvage site. Located next to a residential neighborhood and an elementary school, the site has unacceptable levels of lead and PCBs. Funds were recommended by this Committee and dedicated through the Legislature's budget process and from the Governor's Contingency Fund to pay for properly removing and disposing of the contaminated soils which, in some cases, are in the backyards of abutting homes. The cleanup began this summer and was completed this fall.

All of these milestones are clearly significant. Yet they are just that—highlights. In reality, the day-to-day work of the Department is impressive in its own right. As Deputy Commissioner, it has been my responsibility to ensure this “regular” work occurs as expected by Maine’s citizens and businesses.

"Regular" DEP Functions

Reviewing the "regular" functions of cleaning up spills, reviewing and approving permit applications and conducting compliance and enforcement activities, a solid record of consistent accomplishment emerges. Last year alone:

- o The Department's response teams were called to well over 2,500 sites to respond to petroleum, hazardous waste and other spills.
- o DEP completed cleanup of 107 contaminated sites from Houlton to York. These sites involved contaminated ground water, generally in sensitive areas near drinking water supplies or important aquifers.
- o In 2005, DEP eliminated the backlog of MPDES licenses that was inherited from EPA when the DEP took delegation of the federal NDPS program and met its goal of having no more than 5% of permits expire at any one time. DEP also issued 1063 full Site Location of Development, Natural Resource Protection Act (NRPA) and Stormwater Law permits and 2365 permits by rule (PBRs) – a new record year and a testament to the hard work of DEP's licensors. Our water and land licensing programs are the most efficient in the region with the highest number of permits issued per year per staffer, in some instances we have double the productivity of comparable programs at the state or federal level.
- o Compliance activities occur each year in the tens of thousands, typically taking the form of inspections not resulting in penalty actions, regulatory assistance and technical assistance.
- o Over 40,000 courtesy boat inspections were conducted in 2005 using funds from the state's invasive sticker program. These inspections "caught" three transfers of invasive plants from boat trailers coming from infested waters out of state. As proof of the value of this effort, there were no new infestations of lakes in Maine in 2005. This is the first year since the program began with no additional infestations.
- o And in the enforcement arena, formal enforcement resolutions typically number between 90 and 120 each year and represent months of resource allocation to come to negotiated agreement among the parties. The Department now also has a staff attorney dedicated to pursuing particularly difficult enforcement cases in Maine District Court. During the first six months DEP had this position on board (last half of 2005), the single staff attorney resolved a number of land use, hazardous waste, underground petroleum storage tank, air emission and waste discharge violations.

As I said earlier, the ability, knowledge and dedication of DEP staff focused on protecting Maine's environment is impressive, and those items I've listed are only those I have been involved in overseeing or managing. And, with that rendition of what the Department has been able to do – with this Committee in most cases – over the last three years, I am happy to answer any questions the Committee may have.